

REMARKS

Claims 1-56 were pending in the application, with Claims 1, 17, 21, 31, 44, 50, and 54 being independent. Applicant amends Claims 1, 6, 17, 21, 31, 44, 50, and 54 to further clarify features of the claimed subject matter. Applicant cancels Claims 4 and 5 without prejudice or disclaimer of the claimed subject matter. The original specification and drawings support these claim amendments at least at pages 4, 7, 9-11, and 16-18. These revisions introduce no new matter.

Claims 1-3 and 6-56 are now pending in the application. Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Applicant's amendments and remarks after Final are appropriate under 37 C.F.R. §1.116 because they address the Office's remarks in the Final Action, and thus could not have been presented earlier. In addition, the amendments and remarks should be entered to place the application in better form for appeal.

§ 101 REJECTIONS

Claims 31 and 44 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses the rejection.

Without conceding the propriety of the rejection, Applicant amends the claims to clarify the subject matter. Claims 31 and 44, as amended, now recite in pertinent part “a *method using computer instructions embodied on a computer-readable medium and executable by a processor, the method comprising*”. Support for these amendments may be found at least at pages 18 and 19, and in Figure 4. Thus, no new matter has been

introduced. Applicant respectfully submits that these claims are no longer directed to a non statutory subject matter and respectfully requests that the §101 rejections be withdrawn.

§ 112 REJECTIONS

Claims 31 and 44 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses the rejection.

Without conceding the propriety of the rejection, Applicant amends the claims to clarify the subject matter. Claims 31 and 44, as amended, now recite in pertinent part “a *method using computer instructions embodied on a computer-readable medium and executable by a processor, the method comprising*”. Support for these amendments may be found at least at pages 18 and 19, and in Figure 4. Thus, no new matter has been introduced. Applicant respectfully submits that these claims now comply with §112, second paragraph, and respectfully requests that the §112 rejections be withdrawn.

§ 103 REJECTIONS: A.-F.

A. Claims 1-6, 13, 15, 17-26, 31-35, 41, 44-47, 50-51, and 54-56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,157,377 to Shah-Nazaroff et al. (hereinafter “Shah”) and further in view of U.S. Patent Application Publication No. 2002/0144262 to Plotnick et al. (hereinafter “Plotnick”) and U.S. Patent No. 5,532,735 to Blahut et al. (hereinafter “Blahut”). Applicant respectfully traverses the rejection.

Independent Claim 1

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent Claim 1 to further clarify features of the subject matter. **Independent claim 1** as amended now recites a control-based content pricing system, comprising:

a content server configured to distribute a media content to a client device in response to a request from the client device to receive the media content;

the content server further configured to distribute an advertisement with the media content by prepending the advertisement to the media content before the media content and the advertisement are distributed to the client device;

a valuation application located on the content server and configured to allocate a cost to the client device for the media content that is distributed, wherein the cost is a direct function of a user viewing interaction based on a view control input received during a playback of the media requested;

the content server further configured to receive a view control input from the client device after the media content and the advertisement have been distributed to the client device indicating how the media content and the advertisement are to be rendered, wherein the view control input comprises a navigation control determining whether the advertisement is rendered for viewing;

the valuation application further configured to adjust the cost allocated for the media content according to the view control input and how the media content was rendered on the client device, wherein when the view control input is the navigation control to advance past the advertisement such that the advertisement is not rendered for viewing, then the valuation application increases the cost, and when the view control input is the navigation control to render the advertisement for viewing, then the valuation application decreases the cost; and

an advertisement log located on the content server and configured to track if the advertisement is rendered for viewing by the client device based on the view control input received or a base time-line based on rendering both the media content and the advertisement on the client device.

Applicant respectfully submits that no such method is disclosed, taught, or

suggested by Shah, Plotnick, and/or Blahut, alone or in combination.

Shah, Plotnick, and Blahut Fail to Disclose, Teach, or Suggest a Valuation Application Configured to Allocate a Cost to the Client Device wherein the Cost is a Direct Function of a User Viewing Interaction based on a View Control Input Comprising a Navigation Control Determining Whether an Advertisement is Rendered for Viewing such that the Cost is Increased if the Advertisement is Not Rendered for Viewing, and the Cost is Decreased if the Advertisement is Rendered for Viewing

Shah is directed towards purchasing upgraded media features for programming transmissions, where higher cost is reflective of better quality or more features (Shah, Abstract; col. 1, lines 39-42; col. 2, lines 19-23). Shah demonstrates that user pre-selects the upgraded media features prior to transmission of corresponding programming (Shah, Fig. 5). In Shah, the server system automatically coordinates the billing for the upgraded media features and automatically coordinates providing the upgraded media features from the corresponding broadcast sources (Shah, Abstract; col. 3, lines 10-14).

Plotnick fails to compensate for the deficiencies of Shah. Plotnick is directed towards presenting viewers with an alternative brief version of a recorded advertisement when the viewers choose to fast-forward through or skip the recorder advertisement (Plotnick, Abstract).

Blahut fails to compensate for the deficiencies of Shah and Plotnick. Blahut is directed towards a technique allowing a viewer to preselect a desired level of advertising to be presented (Blahut, Abstract). Blahut discusses adjusting the viewer's bill based on the amount of advertising the viewer subscribed to (Blahut, col. 2; lines 19-22). In

Blahut the viewer may be alerted that a set of advertisements is coming up and the viewer may opt to cancel viewing the set of advertisements (Blahut, col. 5, lines 26-35). When the viewer opts to cancel viewing the set of advertisements, then the system in Blahut reacts according to the viewer's choice (Blahut, col. 5, lines 34-35).

While the Office states that it would have been obvious to one of ordinary skill in the art at the time of the invention that the “reaction” to the cancelling taught by Blahut would be to increase the fee for the VOD program since Blahut teaches that the fee charged for the program is directly related to how many advertisements the user receives (Office Action, pg. 6), Blahut does not disclose, teach, or suggest “*when the view control input is the navigation control to advance past the advertisement such that the advertisement is not rendered for viewing, then the valuation application increases the cost, and when the view control input is the navigation control to render the advertisement for viewing, then the valuation application decreases the cost*”, as recited in Applicant’s amended Claim 1. Shah and Plotnick, on the other hand, do not discuss or even mention “*allocate a cost to the client device . . . wherein the cost is a direct function of a user viewing interaction based on . . . whether the advertisement is rendered for viewing*”, as recited in Applicant’s amended Claim 1.

Shah, Plotnick, and/or Blahut, do not disclose, teach, or suggest “*a valuation application located on the content server and configured to allocate a cost to the client device for the media content that is distributed, wherein the cost is a direct function of a user viewing interaction based on a view control input received during a playback of the media requested . . . wherein the view control input comprises a navigation control determining whether the advertisement is rendered for viewing; the valuation application*

further configured to adjust the cost allocated for the media content according to the view control input and how the media content was rendered on the client device, wherein when the view control input is the navigation control to advance past the advertisement such that the advertisement is not rendered for viewing, then the valuation application increases the cost, and when the view control input is the navigation control to render the advertisement for viewing, then the valuation application decreases the cost”, as recited in Applicant’s amended Claim 1.

Applicant reviews the evidence and respectfully submits that the evidence no longer supports an obviousness rejection as Shah, Plotnick, and/or Blahut, alone or in combination, fail to disclose, teach, or suggest every feature recited in Applicant’s amended Claim 1. Accordingly, Applicant respectfully requests that the § 103 rejection be withdrawn.

Insufficient Evidence to Suggest Reason to Modify References

“There must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR Int’l v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)). The Office stated it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the server-side AMS of Plotnick into server system of Shah to allow the system operator to take advantage of additional revenue-generating opportunities presented by the ad insertion of Plotnick” (Office Action, pgs. 4-5) and “to combine the system VOD system of Shah with the advertising system of Blahut. It would have been obvious that a desired advertising level option could be added to the order from taught

by Fig. 5 of Shah to facilitate the initial selection of desired advertising taught by Blahut (Office Action, pg. 6). Applicant respectfully disagrees and submits that these modifications are not well reasoned, because there is nothing in either of the references that would suggest this reason.

Furthermore, there is no articulated reason with some rational underpinning to support this rejection. Instead, the asserted reason relies on hindsight without evidence of articulated reasoning to propose the suggested modification. This rejection is improper for this additional reason.

Independent Claims 17, 21, 31, 44, 50, and 54

Independent Claims 17, 21, 31, 44, 50, and 54 are directed to a system, a method, another method, a computer readable storage media, and another computer readable storage media, respectively, and are allowable for reasons similar to those discussed above with respect to Claim 1.

Applicant respectfully submits that the evidence no longer supports an obviousness rejection as Shah, Plotnick, and/or Blahut, alone or in combination, fail to disclose, teach, or suggest every feature recited in Applicant's amended Claims 17, 21, 31, 44, 50, and 54. Accordingly, Applicant respectfully requests that the § 103 rejection be withdrawn.

Dependent Claims 2-6, 13, 15, 18-20, 22-26, 32-35, 41, 45-47, 51, and 55-56 depend directly or indirectly from one of independent Claims 1, 17, 21, 31, 44, 50, and 54, respectively, and are allowable by virtue of this dependency. These claims are also allowable for their own recited features that, in combination with those recited in the

independent claims are not disclosed, taught, or suggested by Shah, Plotnick, and/or Blahut. Thus, Applicant respectfully request the §103 rejection of these claims be withdrawn.

B. Claims 7, 9-12, 27-28, 37-40, 48-49, and 52-53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shah, in view of Plotnick and Blahut, and further in view of U.S. Patent No. 7,340,759 to Rodriguez (hereinafter “Rodriguez”).

C. Claims 8 and 36 stand rejected under § 103(a) as being unpatentable over Shah in view of Plotnick and Blahut, and further in view of U.S. Patent Application Publication No. 2004/0111756 to Stuckman et al. (hereinafter “Stuckman”).

D. Claims 14 and 42 stand rejected under § 103(a) as being unpatentable over Shah in view of Blahut and Plotnick, and further in view of U.S. Patent Application Publication No. 2003/0149975 to Eldering et al. (hereinafter “Eldering”).

E. Claim 16 stands rejected under § 103(a) as being unpatentable over Shah in view of Plotnick, Blahut, and Rodriguez, and in further view of U.S. Patent No. 6,972,680 to Yui et al. (hereinafter “Yui”).

F. Claims 29-30 and 43 are not discussed in the Office Action. While Claim 43 is listed as being rejected under Shah, Plotnick, Blahut, and Rodriguez, as well as under Shah, Plotnick, Blahut, Rodriguez, and Yui. (see Office Action, pgs. 11, 14), the Office does not provide any support for rejection of these claims.

Applicant respectfully traverses the rejection.

As discussed above in regard to the independent claims, Shah, Plotnick, and Blahut fail to disclose, teach, or suggest each and every element or feature of the independent Claims 1, 17, 21, 31, 44, 50, and 54. Furthermore, these references are cited in the § 103 rejection of claims that depend from these independent claims.

Rodriguez, Stuckman, Eldering, and Yui fail to compensate for the above-discussed deficiencies of Shah, Plotnick, and Blahut. Rodriguez is directed towards dynamically pricing viewing options in a digital broadband communication network by receiving bandwidth allocation information from a bandwidth allocation manager and dynamically assigning a price criterion to each of a group of viewing options based at least in part on the bandwidth allocation information (Rodriguez, Abstract). Stuckman is directed towards presenting a list of downloadable video programs and adding a user's selection to a download schedule to schedule downloading the user's selection when available (Stuckman, Abstract). Eldering is directed towards selecting targeted advertisements to be presented to subscribers along with selected video in a video on demand system (Eldering, Abstract). Yui is directed towards recording the television broadcast on a hard drive, detecting a user's movement, and enabling a continuation of the broadcast program that was viewed to be viewed in a room at the user's destination (Yui, Abstract).

Dependent Claims 7-12, 14, 16, 27-28, 36-40, 42, 48-49, and 52-53 depend directly or indirectly from one of independent Claims 1, 17, 21, 31, 44, 50, and 54, respectively, and are allowable by virtue of this dependency. These claims are also allowable for their own recited features that, in combination with those recited in the independent claims are not disclosed, taught, or suggested by Shah, Plotnick, Blahut,

Rodriguez, Stuckman, Eldering, and/or Yui, alone or in combination. Thus, Applicant respectfully request the §103 rejection of these claims be withdrawn.

Dependent Claims 29-30 and 43 depend directly or indirectly from one of independent Claims 21 and 31, respectively, and are allowable by virtue of this dependency. These claims are also allowable for their own recited features that, in combination with those recited in independent Claims 21 and 31 are not disclosed, taught, or suggested by the references. Furthermore, the Office did not reject these claims in the current Office Action. Thus, Applicant respectfully submits that Claims 29-30 and 43 are in condition for allowance.

Applicant respectfully submits that Shah, Plotnick, Blahut, Rodriguez, Stuckman, Eldering, and/or Yui, do not render the claimed subject matter obvious and that the claimed subject matter, therefore, is patentably distinguishable over the cited references. For all of these reasons, Applicant respectfully request the §103(a) rejection of these claims be withdrawn.

CONCLUSION

Claims 1-3 and 6-56 are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of the subject application. If any issue remains unresolved that would prevent allowance of this case, the Office is requested to contact the undersigned attorney to resolve the issue.

Respectfully submitted,

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